

Frequently Asked Questions & Answers Related to Davis Bacon Act/Davis Bacon Related Act (DBA/DBRA)

Reference:

- 29 CFR Part 5, Subtitle A, section 5.2, Definitions
- The U.S. Department of Labor Davis-Bacon Resource Book (dated 11/2002), which can be accessed at <http://www.wdol.gov/docs/WRB2002.pdf>, and
- Final Rule published in the *Federal Register* on December 20, 2000, 65 FR 80268-80278, including a section focused on “Coverage of Transportation – § 5.2(j)” on pages 80275-6), accessible at: <http://www.dol.gov/sec/reg/fedreg/final/2000032436.pdf>.

1. Does it matter who employs the truck driver for the application of Davis Bacon?

Answer:

No. In the decision reached in *Building and Construction Trades Dept. v. Midway*, decided on May 17, 1991, the Court of Appeals for the District of Columbia Circuit held that language in Department of Labor (DOL) regulation was inconsistent with the Davis-Bacon Act. That case involved truck driver employees of the prime contractor's wholly owned subsidiary, who were delivering materials from a commercial supplier to the construction site. The material delivery truck drivers spent ninety percent of their workday on the highway driving to and from the commercial supply sources, ranging up to 50 miles round trip and stayed on the site of the work only long enough to drop off their loads, usually for not more than ten minutes at a time. At issue before the D.C. Circuit was whether the “material delivery truck drivers” were within the scope of construction as defined by the regulatory provision then in effect at 29 CFR 5.2(j). The Court of Appeals ruled that material delivery truck drivers, who come onto the site of the work merely to drop off construction materials, are not covered by the Davis-Bacon Act even if they are employed by the government contractor, because they are not “employed directly upon the site of the work”. Subsequent Appeals Court rulings in two other cases further addressed the scope of the “site of the work”. In a Final Rule published in the *Federal Register* on December 20, 2000, 65 FR 80268-80278, the Department of Labor issued revised regulatory definitions of the terms “site of the work” and “construction”.

2. Are truck drivers employed by a construction prime contractor or subcontractor to transport materials or equipment from the contractor or subcontractor's plant or yard to a Davis-Bacon covered project, or from a Davis-Bacon covered project to the contractor's / subcontractor's plant or yard covered?

Answer:

If the contractor/subcontractor's *plant or yard is part of the “site of the work”*, the drivers are covered. If the contractor/subcontractor's plant or yard *is not part of the “site of the work”*, the drivers are not covered. Department of Labor (DOL) regulations 29 C.F.R. § 5.2(j)(2) states that the transportation of materials or supplies to or from the “site of the work” by the employees of the construction contractor or a

construction subcontractor is not construction. Thus, transportation of such materials or supplies is not covered unless the transportation is between the construction work area and a dedicated facility located “adjacent or virtually adjacent” to the construction site. Driving to and from a commercial facility that serves the general public (not established to serve the project) would not be covered even if it is adjacent or virtually adjacent to the covered construction area.

3. Are drivers transporting materials or equipment from one Davis-Bacon project to another Davis-Bacon project covered?

Answer:

Generally, no. Again the regulatory definition of “construction ...” specifically states that the transportation of materials or supplies to or from the “site of the work” is not considered construction (29 CFR 5.2(l)(2)). Nevertheless, there may be some instances where the two sections of highway construction are contiguous and the transportation of materials or equipment is all on the “site of the work” of both sections that constitute a combined covered project.

4. Are drivers transporting material or equipment away from a Davis-Bacon project or another project of the contractor which is not a Davis-Bacon project covered?

Answer:

No. Unless the transportation of such materials or equipment is to a dedicated facility located adjacent or virtually adjacent to the construction area.

5. Truck drivers are engaged in hauling excavated material, debris, dirt, asphalt, etc., for recycling away from a Davis-Bacon covered construction site.

- a. Is the time spent loading at the site covered?
- b. Is the time transporting the material away from the site covered?
- c. Is the time unloading the material covered?

Answer:

Assuming that the location or facility to which the excavated material or debris will be transported is not a facility that is part of the “site of the work” (adjacent or virtually adjacent to the construction work area: and dedicated exclusively or nearly so to the performance of the contract or project):

- a. If the time spent on the site is not more than *de minimis*, then loading the debris, dirt, asphalt, etc., is not covered.
- b. The time transporting the material away from the covered site is not covered. The regulation specifically states that the transportation of materials or supplies to or from the “site of the work” is not considered construction.
- c. The time unloading the material off site is not covered. Davis-Bacon only applies to work done on the “site of the work”.

6. Are truck drivers who are employed by an independent contractor or bona fide materialman to haul material to a covered project from a non-covered supply source (i.e., sand or gravel pit, asphalt plant serving the public in general) covered?

Answer:

No. If the material source is commercial in nature and supplies the general public, then the drivers are generally not covered. However if the time spent on the site of work is more than de-minimis (20% of the truck driver's work week), the driver would be covered. (regardless of whether they are employed by the contractor or subcontractor, or by an independent contractor or bona fide materialman/supplier).

7. In situations where truck drivers are employed by an independent contractor or a materialman to deliver materials to the "site of work" from covered supply sources (e.g., batch plants or borrow pits, stockpiles, etc.) which have been established to serve exclusively, or nearly so, the covered project), are such drivers covered?

Answer:

Yes. If the supply facility is part of the "site of the work" because it is dedicated (exclusively or nearly so) to performance of the contract or the project and located within or near the project limits – "adjacent or virtually adjacent" to the actual construction site.

Note: DOL has an **enforcement position** with respect to bona fide owner-operators of trucks who own and drive their own trucks. Certified payrolls including the names of such owner-operators do not need to show the hours worked or rates paid, only the notation "owner-operator". This position does not apply to owner-operators of other equipment such as bulldozers, backhoes, cranes, welding machines, etc.

8. A barricading company is supplying traffic control products for 20 Davis-Bacon covered projects. This supplier drops off/picks up traffic control devices at the contractor's yard for each of these 20 projects. There is no set up work involved. Are the employees of this barricading company covered?

Answer:

Generally no. If the contractor's yard is not deemed a part of the "site of work", the employees are not covered. However, if the contractor's yard is deemed a part of the "site of work", then the employees would be covered if the time spent on each project is more than 20% of their work week.

9. Would these workers be covered if they are not only involved in drop off/pick up, but are also involved in setting up and servicing the traffic control products?

Answer:

Yes. If a material supplier, manufacturer, or carrier undertakes to perform part of a construction contract as a subcontractor, its laborers and mechanics employed at the site of the work are subject to the prevailing wage requirements under Davis-Bacon in the same manner as those employed by any other contractor or subcontractor.

10. What prevailing wage rate would apply to the workers in the above example?

Answer:

The employees driving the trucks would be paid truck drivers rates. The employees doing the servicing would be paid at the unskilled or misc. laborers rate. If the driver is doing both activities, Davis-Bacon compliance can be achieved by payment of the higher rate for all hours worked. However, laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked in each, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

11. The manufacturer of concrete box beams delivers 10 beams to a Davis-Bacon covered project. After beams are set and the manufacturer sends a technician out to the project to post tension the beams. Is the post tensioning of the beams covered?

Answer:

For purposes of administration and enforcement of Davis-Bacon, under the applicable regulations issued by the Department of Labor, the regulatory definition of "construction" includes "[m]anufacturing or furnishing of materials, articles, supplies or equipment on the site...", as well as the installation of items fabricated off-site. (See 29 CFR 5.2(l)). As discussed regarding item 8, if a material supplier, manufacturer, or carrier undertakes to perform part of a construction contract as a subcontractor, its laborers and mechanics employed at the site of the work are subject to the prevailing wage requirements under Davis-Bacon in the same manner as those employed by any other contractor or subcontractor. For example, employees of a materials supplier who are required to perform more than an incidental amount of **construction work** in any workweek at the site of the work would be covered by Davis-Bacon and due the applicable wage rate for the classification of work performed. For enforcement purposes, the Department of Labor adopts a policy that if such an employee spends more than 20% of his/her time in a workweek engaged in such activities on the site, he/she is covered by Davis-Bacon for all time spent on the site during the workweek.)

12. The contractor hires a company to provide inspection services for the contractor's quality control operations on a Davis-Bacon covered project. Are the inspectors subject to prevailing wages?

Answer:

Contractors and subcontractors performing work on covered contracts are required to pay "**all laborers and mechanics employed directly on the site of the work**" at least the wage rates listed in the contract wage determination for the work performed, for all hours worked on the site of the work. In general, individuals who perform inspections and testing for quality control purposes are not considered laborers or mechanics within the meaning of the Davis-Bacon Act. The primary function of such employees is to take measurements and to accumulate data, upon which recommendations are based, to advise contractors how to rectify problems which may become apparent. Generally, such employees do not physically make the required corrections. If, however, such an employee spends a substantial amount of his/her time in any workweek (more than 20 percent) on the jobsite performing manual,

physical, and mechanical functions which are those of traditional craftsmen, he/she would be considered laborers or mechanics for the time so spent. (The regulatory definition of laborer or mechanic is set forth in 29 CFR 5.2(m).)

13. The contractor hires an engineering firm to provide surveying and staking activities for a Davis-Bacon covered project. Are these workers subject to prevailing wages?

Answer:

Where surveying is performed immediately prior to and during actual construction, in direct support of construction crews, such activity is covered by Davis-Bacon requirements for laborers and mechanics. The determination of whether certain members of survey crews are laborers or mechanics is a question of fact. Such a determination must take into account the actual duties performed. As a general matter, an instrumentman or transitman, rodman, chainman, party chief, etc., are not considered laborers or mechanics. However, a crew member who primarily does manual work, for example, clearing brush, is a laborer and is covered for the time so spent.

14. Does Davis Bacon apply to warranty work?

Answer:

If a material supplier, manufacturer or carrier undertakes to perform a part of a construction contract as a subcontractor, its laborers and mechanics employed at the site of the work would be subject to DBRA requirements in the same manner as those employed by any other contractor or subcontractor. This would include warranty and/or repair work. Employees of a material supplier who are required to perform more than an incidental amount of construction work in any workweek at the site of the work would be covered by the DBRA and due the applicable wage rate for the classification of work performed. For example, if an employee of a supplier of precise concrete items is required to go to the project site to repair and clean such items and in so doing performs more than an incidental amount of construction activity on the contract, the individual would be subject to DBRA. (Similarly, an employee of an equipment rental dealer or tire repair company who performs on-site repair work on leased equipment is subject to DBRA if the employee performs more than an incidental amount of work on site.) For enforcement purposes, it is the Department of Labor's policy that if such an employee spends more than 20% of his or her time in a workweek engaged in such activities on the site, he/she is DBRA covered for all time spent on the site during that workweek.

15. How are truck drivers covered on "split-trip" operations where a portion of the trip meets the criteria for DBRA coverage and the other portions of the trip do not.

Answer:

DBRA coverage is for "laborers and mechanics" for time "employed on the 'site of the work'". If the truck driver spends more than de-minimis (20%) of their work week on the site of work, the time he is on the site of work is covered by Davis-Bacon